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UNCLAS SECTION 01 OF 03 PANAMA 002294

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SENSITIVE

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SUBJECT: SUPREME COURT JUSTICES FACE CRIMINAL COMPLAINT IF
NATIONAL ASSEMBLY AGREES

REF: PANAMA 02232

Summary

1. (SBU) In the wake of a March 2005 scandal that featured mutual allegations of wrongdoing between four Supreme Court Justices, on November 14 Alianza Pro Justicia (Pro-Justice Alliance) dramatically submitted to the National Assembly a criminal complaint against eight Supreme Court Justices. The complaint was based on the results of a legal audit conducted by Alianza that severely questioned six Court rulings. The National Assembly has the constitutional power to investigate and impeach Justices. Many observers doubt that the PRD-dominated National Assembly will take any action against the Justices. In Panama, it is a foregone conclusion that without Executive backing, nothing will happen in the legislature. End summary.

Background

2. (U) In a March 2005 scandal Supreme Court Justices Arturo Hoyos, Winston Spadafora and Anibal Salas denounced Justice Adan Arjona for hiring staffers on the Executive branch payroll (instead of the Judicial payroll). Arjona retaliated by holding a press conference questioning the three Justices' decisions in six cases involving narco-trafficking. Arjona's accusations struck a chord with the Panamanian public. President Torrijos responded by organizing a "Pacto para la Justicia" and forming a Commission to make legal recommendations on how to improve administration of justice (AOJ), including the appointment of new Justices (see reftel).

The audit

3. (SBU) Alianza Pro Justicia (the "Alianza" comprises 15 civil society organizations,) on November 14 announced the findings of its September audit of the six cases cited by Justice Arjona. The findings included a criminal complaint against eight Supreme Court justices -- practically the entire Court minus Arjona and Justice Lee (Note: Justice Lee was not involved in any of the six cases. Justice Spadafora and his alternate Justice Cardenas were involved in some of the six cases and therefore the criminal complaint included both of them, making a total of eight Justices.) Volunteer litigation lawyers studied the rulings in each of the cases for Alianza's audit. These lawyers and a Drug Prosecutor who also contributed to the audit requested that Alianza did not disclose their names to avoid retaliation against them in their legal practices.

4. (SBU) Alianza's audit showed "serious concerns" about the rulings in two of the six cases. The audit found "issues" with the other four cases, Castillo explained, but they were more open to interpretation. The two cases were those involving Colombian citizen Lorena Henao Montoya and Belize national Fernando Requena Duval. Henao Montoya had been charged with crimes against public health and the national economy and forgery of documents (all related to drug trafficking). Henao's brother, her late husband, and her current common-law husband all were members of the Cali Cartel. With Justice Arjona dissenting, eight Justices declared that Lorena Henao's detention in Panama was illegal and set her free. Fernando Requena was detained for narco-trafficking. Julio Cesar Espinosa was detained while he was trying to help Requena escape from jail. Espinosa confessed that he was paid \$40,000 by Requena to free him. With Arjona dissenting, the other Justices declared Espinosa's detention illegal. On January 19, 2004, Requena escaped with the help of several armed individuals who broke into a public hospital where Requena was undergoing a medical checkup, shooting their weapons in the air. Requena's whereabouts remain unknown.

5. (SBU) Alianza strongly believes that the plaintiffs should have not been released from jail as the Justices had "much information and evidence" linking them to crimes. Ironically, Colombian authorities arrested Lorena Henao

Montoya at the instant that she set foot in the Bogota airport following her deportation from Panama some months ago. A Colombian court later found Henao Montoya guilty based on the file provided by the Panamanian Public Ministry. (Note: Henao is currently serving sentence in Colombia for narcotrafficking and money laundering. End note).

16. (SBU) After the audit was completed in September, Castillo met with the Panamanian Executives Association's (APEDE) legal group (about 20 lawyers) in a closed-door meeting to ask their opinion. Castillo claimed that the group strongly agreed that an immediate formal complaint be submitted. Castillo then met, also in a closed-door meeting, with representatives of Panama's Council for the Private Enterprise (CoNEP), the Chamber of Commerce, Civic Clubs, and the National Bar Association. Except for the National Bar Association President Mercedes de Grimaldo, all of the others also agreed to take immediate action.

17. (SBU) Castillo admitted that deciding to move forward and submitting the complaint before the National Assembly was not an easy one. "I was scared. I am still sometimes concerned," she claimed. "These two cases directly involve the Cali Cartel. We have been very careful in not mentioning them, but you never know which interests we are hitting," Castillo exclaimed.

18. (SBU) Castillo said that Alianza was very careful not to charge the Justices with corruption. Alianza does not have any "smoking gun" evidence to prove corruption, though it is implied. The charges filed were for abuse of authority and infringement of duties by public servants and were based on the Penal Code, the Judicial Code and the Constitution. On November 17, media reported that the National Assembly President Elias Castillo and Commissioner Freidi Torres (a former Majority Leader) have asked Alianza for evidence to justify their criminal complaint. Magaly Castillo claimed that Alianza submitted to the Assembly a tape from Justice Adan Arjona's press conference implicating his colleagues in wrongdoing, authenticated copies of all the sentences, authenticated copies of the Colombian prosecutor's legal opinion, authenticated copies of the Colombian court ruling against Henao, and a copy of Alianza's legal audit. "We should not need to submit anything else. All the legislators need to do is read the cases. It is so obvious, it is disgusting," Castillo said.

Their expectations

19. (SBU) Castillo said that she doubts the National Assembly will take any action against the Justices. She also explained that National Bar Association President Mercedes de Grimaldo had opposed submitting criminal complaint, considering it "a waste of time," although she agreed that the sentences were highly questionable. (Note: According to media reports, Grimaldo supports the criminal complaint alleging that there is enough evidence to prove wrongdoing by the Justices. End note).

110. (SBU) According to Castillo, Alianza proceeded with the criminal complaint because it was "the right thing to do" and because it received strong backing from a heterogeneous group of business people, blue collar workers, the Catholic Church and several other Christian Churches. "How much more representative can we get?" Castillo asked.

Comments:

11. Like Castillo many Panamanians such as those who had participated in live radio talk shows in the past few days doubt that the National Assembly will take steps against the Justices. President Torrijos, whose Democratic Revolutionary Party (PRD) controls the assembly, could take this opportunity to shake up the Court and possibly impeach one or more justices. But allegations that several cases before the Court (the CEMIS case, above all) may involve him and other high-ranking government officers, lead many to believe that he is not eager to pick a fight with the Court.

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